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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/539,161

06/14/2005

Thomas Gradel

190-90

2686

2746

7590

03/13/2008

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EXAMINER

WOODALL, NICHOLAS W

ART UNIT

PAPER NUMBER

3733

MAIL DATE

DELIVERY MODE

03/13/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/539,161	Applicant(s) GRADEL ET AL.	
	Examiner Nicholas Woodall	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17-20 is/are allowed.
- 6) ☒ Claim(s) 11-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to applicant's amendment received on 12/22/2007.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 11-16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 11 states negative limitations not supported by the specification and therefore fail to meet the written description requirement of 35 U.S.C. 112 first paragraph (See MPEP 2173.05(i)). For examination purposes, the examiner will interpret the claims as follows; claim 11 states, ... the connecting sliding piece comprising only one first hole... will be interpreted as ...the connecting sliding piece comprising a first hole and claim 11 states, ...the device having no points which are located outside of the region of the sliding piece... will be interpreted as ...the device wherein none of the two points are located outside of the region of the sliding piece.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

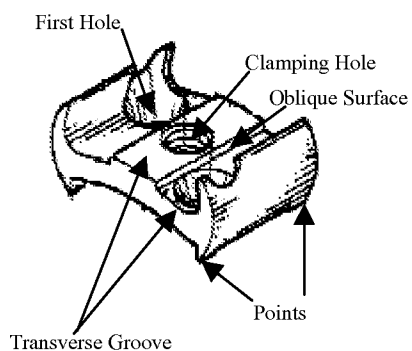
5. Claims 11, 12, and 14-16 are rejected as understood under 35 U.S.C. 102(b) as being anticipated by Shih (U.S. Patent 6,136,002).

Regarding claims 11, 15, and 16, Shih discloses a device comprising at least one connecting sliding piece (see Figure 1 below). The connecting sliding piece is elongate in a general lengthwise direction and comprises a first hole capable of allow the passage and fixing of an anchoring screw. The connecting sliding piece further comprises receiving means capable of receiving a portion of a fastening rod along a transverse axis perpendicular to the lengthwise direction and to receive clamping means capable of selectively clamping the fastening rod in the receiving means. The connecting sliding piece further comprises two points capable of penetrating bone to retain the connecting sliding piece on a bone, wherein the two points are disposed in the region of the sliding piece including the receiving means on the interior face of the connecting sliding piece and opposite the receiving means that are on the exterior face of the connecting sliding piece. The two points are parallel to and offset from each other in the direction of the transverse axis parallel to the fastening rod. The fastening rod is engaged in the end of the receiving means opposite the anchoring screw in the general lengthwise direction. Regarding claim 12, Shih discloses a device wherein each point is a generally triangular flat structure in a plane perpendicular to the direction of the transverse axis. Regarding claims 14 and 15, Shih discloses a device wherein the interior face of the sliding connecting piece is capable of bearing against the vertebra

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and is concave and substantially cylindrical with a circular profile. Further regarding claim 15, Shih discloses a device wherein each point extends in a substantially radial direction of the cylindrical interior face of the connecting sliding piece and the first hole has an axis that is substantially radial relative to the cylindrical interior face of the connecting sliding piece so that the points and the anchoring screw converge toward the vertebra. Further regarding claim 16, Shih discloses a device further comprising a transverse exterior groove, a cylindrical bearing surface, a clamping hole, and an oblique bearing surface. The cylindrical bearing surface forms a first edge of the transverse groove opposite the first hole and conformed to receive a portion of the fastening rod. The clamping hole is located in the bottom of the transverse groove is separated from the first edge by a distance greater than the diameter of the fastening rod. The oblique bearing surface constitutes a second edge of the transverse groove and is inclined to the axis of the clamping hole.

Figure 1



Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brace (U.S. Patent 6,187,005) in view of Stucker (U.S. Patent 5,713,898).

Brace discloses the invention as claimed except for the interior surface of the sliding connecting piece comprises two points opposite the receiving means that are parallel and offset in the direction perpendicular to the longitudinal axis of the sliding connection piece. Stucker teaches a device comprising two points opposite the receiving means that are parallel and offset in the direction perpendicular to the longitudinal axis of the sliding connection piece in order to attach the device to bone (column 7 lines 14-18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the sliding connecting piece of Brace with two points on the interior surface of the piece opposite the receiving means that are parallel and offset in the direction perpendicular to the longitudinal axis of the sliding connecting piece in view of Stucker in order to attach the device to bone.

Regarding claim 12, the combination of Brace and Stucker discloses the invention as claimed except for the points being generally triangular structures in a plane perpendicular to the direction of the transverse axis. It would have been an obvious matter of design choice to one skilled in the art at the time the invention was

made to construct the points as a generally triangular flat structure in a plane perpendicular to the direction of the transverse axis, since applicant has not disclosed that such solve any stated problem or is anything more than one of numerous shapes or configurations a person ordinary skill in the art would find obvious for the purpose of providing a forming edge in the heating portion or clamp. In re Dailey and Eilers, 149 USPQ 47 (1966).

8. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brace (U.S. Patent 6,187,005) in view of Stucker (U.S. Patent 5,713,898) further in view of Zindrick (U.S. Publication 2004/0092929).

Regarding claim 13, the combination of Brace and Stucker disclose the invention as claimed except for the two triangular points comprising retaining teeth on two sides. Zindrick discloses a device comprising two points further including teeth on two sides in order to provide increased surface contact with the vertebral bone page 4 paragraph 44). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the device of Brace modified by Stucker wherein the two triangular points included teeth on two sides in view of Zindrick in order to provide increased surface contact with the vertebral bone.

9. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brace (U.S. Patent 6,187,005) in view of Stucker (U.S. Patent 5,713,898) in view of Zindrick (U.S. Publication 2004/0092929) further in view of Schafer (U.S. Patent 5,662,652).

The combination of Brace, Stucker, and Zindrick disclose the invention as claimed except for the interior face of the sliding connecting piece being concave and

substantially cylindrical with a circular profile. Schafer teaches a bone plate that has a concave interior surface that is substantially cylindrical with a circular profile in order to create better contact between the bone plate and the bone surface (column 8 lines 5-11). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the sliding connecting piece of Brace modified by Stucker further modified by Zindrick with a concave interior surface that is substantially cylindrical with a circular profile in view of Schafer to create better contact between the bone plate and the bone surface.

Allowable Subject Matter

10. Claims 17-20 are allowed.

Response to Arguments

11. Applicant's arguments filed 12/22/2007 have been fully considered but they are not persuasive. The examiner has presented new grounds of rejection as necessitated by the amendment making this office action **FINAL**.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Woodall whose telephone number is (571)272-5204. The examiner can normally be reached on Monday to Friday 8:00 to 5:30 EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nicholas Woodall/
Examiner, Art Unit 3733

/Eduardo C. Robert/
Supervisory Patent Examiner, Art Unit 3733